

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Ella Mintz	Team: Squad #8	CCRB Case #: 201602035	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Friday, 03/11/2016 10:00 AM	Location of Incident: Liberty Avenue and Shepherd Avenue	Precinct: 75	18 Mo. SOL 9/11/2017	EO SOL 9/11/2017	
Date/Time CV Reported Fri, 03/11/2016 10:27 AM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Fri, 03/11/2016 10:27 AM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. SGT Mackenson Nelson	05378	944279	075 PCT
2. POF Anais Villegas	07793	947337	075 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POF Anais Villegas	Abuse: Police Officer Anais Villegas refused to provide her shield number to § 87(2)(b)	
B.SGT Mackenson Nelson	Abuse: Sergeant Mackenson Nelson searched the vehicle in which § 87(2)(b) was an occupant.	

Case Summary

On March 11, 2016, at approximately 10:00AM, § 87(2)(b) was driving on Liberty Avenue and Shepherd Avenue in Brooklyn. § 87(2)(b) was pulled over by Police Officer Anais Villegas (Tax#947337) and Sergeant Mackenson Nelson (Tax#944279), both of the 75th Precinct, for failing to signal. Sgt. Nelson told § 87(2)(b) that the license he provided did not look like him. Sgt. Nelson asked for § 87(2)(b) to step out of his vehicle and that while he was not under arrest, he would be placed in handcuffs. While § 87(2)(b) was in the process of being handcuffed, he allegedly asked for both of the officers' badge numbers by saying "Why are y'all doing this? I want y'all badge numbers?" PO Villegas allegedly refused to provide this information to § 87(2)(b) (**Allegation A**) Sgt. Nelson then opened § 87(2)(b)'s front driver's side door and his rear driver's side door and looked through these areas. He then looked in § 87(2)(b)'s trunk. (**Allegation B**) Sgt. Nelson did not recover anything from his inspection. PO Villegas issued § 87(2)(b) summons#§ 87(2)(b) for failing to signal. There is no video footage related to this case.

Mediation, Civil and Criminal Histories

- § 87(2)(b) rejected mediation.

- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Civilian and Officer CCRB Histories

- This is § 87(2)(b)'s third CCRB complaint. (Board Review 03) § 87(2)(b)
- Sgt. Nelson has been a member of the NYPD for 8 years and this is the 7th CCRB complaint filed against him. In CCRB Case#201505430, an allegation of refusal to process a civilian complaint was substantiated against him. The CCRB recommended formalized instructions; as of the date of this report, there is no NYPD disposition. § 87(2)(g)
- PO Villegas has been a member of the NYPD for 7 years and this is the 2nd CCRB complaint filed against her. PO Villegas has no substantiated allegations § 87(2)(g).

Findings and Recommendations

Allegation A –Abuse of Authority: Police Officer Anais Villegas refused to provide her shield number to § 87(2)(b)

In § 87(2)(b)'s intake call with the CCRB on March 11, 2016, he provided the name and badge number of subject officer, Sgt. Nelson; he provided PO Villegas' name, which he obtained from the summons, but not her shield number. (Board Review 04) § 87(2)(b) did not allege that he asked her for this information. In his interview with the CCRB on March 23, 2016, § 87(2)(b) stated that prior to being pulled over, he was not on his phone, and did not commit any moving violations. (Board Review 05) § 87(2)(b) immediately pulled over when he saw the lights and sirens. Once he pulled over, § 87(2)(b) did not make any movements until the officers approached. § 87(2)(b) provided his license and registration. Sgt. Nelson and PO

Villegas went to the RMP. While § 87(2)(b) was waiting in the car, he made a call to his cousin to let him know he was stopped and would be late in meeting him.

About a minute or two after they went into the car, Sgt. Nelson came back out and told § 87(2)(b) “The ID doesn’t look like you and neither did the two photos in the system.” § 87(2)(b) was shocked by this; he had never had an issue with his license before and said, “Are you serious?” Sgt. Nelson responded by saying, “Yeah. Pending my investigation, you’ll be able to leave.” Sgt. Nelson never elaborated about what this investigation was for or what it entailed.

Sgt. Nelson asked § 87(2)(b) to step out of the vehicle, which § 87(2)(b) did immediately. Sgt. Nelson said, “You’re not under arrest but I’m going to put handcuffs on you.” § 87(2)(b) said, “Why are y’all doing this? I want y’all badge numbers?” Sgt. Nelson said, “Okay, I’ll give it to you.” § 87(2)(b) could not recall PO Villegas’ response to this. PO Villegas escorted § 87(2)(b) around the car, where he leaned against the front of the marked RMP and watched Sgt. Nelson. At the end of the interaction, Sgt. Nelson provided his name and badge number to § 87(2)(b).

In her interview with the CCRB on April 7, 2016, PO Villegas stated that she observed § 87(2)(b) fail to signal, but she could not recall where she observed this infraction. When she initially put on the lights and sirens to signal for § 87(2)(b) to pull over, he continued driving eastbound on Liberty Avenue and did not immediately comply. (Board Review 06) She honked the horn twice and he eventually pulled over 3-4 blocks away after she initially signaled him. When she and Sgt. Nelson got out of their vehicle, § 87(2)(b) began fidgeting; he looked in the glove compartment and he was looking at the front driver’s seat controls. While they were walking to § 87(2)(b)’s car, Sgt. Nelson told PO Villegas, “Be careful, there’s a lot of movement.”

When they got to the car, PO Villegas approached the driver’s side while Sgt. Nelson approached the passenger’s side. She immediately said, “Can you stay still? Just have your hands visible.” § 87(2)(b) said he didn’t have to listen and that it was his car. PO Villegas could not see what § 87(2)(b) was doing with his left hand. PO Villegas asked § 87(2)(b) to stop moving around more than once. Sgt. Nelson came around to the driver’s side and also told § 87(2)(b) to stop moving. § 87(2)(b) appeared to be recording the officers at the time; PO Villegas told § 87(2)(b) that he could record. PO Villegas asked for § 87(2)(b)’s license, which he provided.

Sgt. Nelson opened the driver’s side door and told § 87(2)(b) to step out of the vehicle. § 87(2)(b) complied and said, “Why are you taking me out of my car?” PO Villegas could not recall what else § 87(2)(b) was saying but he was being “loud.” Sgt. Nelson told § 87(2)(b) that the reason he told him to step out of the vehicle was because his moving around was making the officers nervous. Sgt. Nelson told § 87(2)(b) something like, “You’re not under arrest but you’re being placed in handcuffs for your safety and our safety.” Sgt. Nelson used two pairs of handcuffs on § 87(2)(b) because he is a bigger guy. PO Villegas did not remember if § 87(2)(b) stated, “Why are you doing this? I want y’all badge numbers?” § 87(2)(b) never asked for PO Villegas’ badge number at any point; she never refused to provide this information.

In his interview with the CCRB on April 8, 2016, Sgt. Nelson stated that in addition to seeing § 87(2)(b) fail to signal, he also witnessed him driving while speaking on the phone. (Board Review 07) After signaling for § 87(2)(b) to pull over, § 87(2)(b) continued to drive and appeared to be reaching into the backseat of his vehicle; he also reached down in front of him. Sgt. Nelson corroborated PO Villegas in that § 87(2)(b) refused to pull over for 3-4 blocks and that on the walk over to the car, he told her, “Be careful, there’s a lot of movement.”

When they approached, § 87(2)(b) immediately said in a loud tone of voice, “Why are you stopping me? I didn’t do anything. I’m going to make a CCRB on you guys.” § 87(2)(b) then said that he had a family member on the job; § 87(2)(b)’s right hand was holding his phone in his lap and Sgt. Nelson could not see his left hand. PO Villegas asked for § 87(2)(b)’s license and registration twice. § 87(2)(b) reached for his license with his left hand, which was located in § 87(2)(b)’s pants; this was the first time Sgt. Nelson saw § 87(2)(b)’s left hand.

Sgt. Nelson looked at the license, which was from New Jersey, and the picture in the license didn’t look like § 87(2)(b). § 87(2)(b) explained that he lost weight. Sgt. Nelson never went to the driver’s side of the vehicle.

Both Sgt. Nelson and PO Villegas returned to the RMP, while § 87(2)(b) remained in his vehicle. Sgt. Nelson told PO Villegas to keep an eye on § 87(2)(b) while Sgt. Nelson ran a check on the license. Sgt. Nelson looked at § 87(2)(b) who continued to move around in his vehicle. § 87(2)(b) was leaning toward the driver’s side and reaching toward the backseat area. Sgt. Nelson did not feel at ease with the situation. At this point for safety reasons, Sgt. Nelson decided to go approach § 87(2)(b) and have him step out of the car.

Sgt. Nelson frisked § 87(2)(b)’s waist area to make sure he did not have any weapons, which he did not. Sgt. Nelson did not remember if § 87(2)(b) asked for his or PO Villegas’ name and shield at this time.

Patrol Guide procedure 203-09 states that an officer must, “Courteously and clearly state your rank, name, shield number and command, or otherwise provide them, to anyone who requests you to do so.” (Board Review 08)

§ 87(2)(g)
[REDACTED]

§ 87(2)(g)

Allegation B- Abuse of Authority: Sergeant Mackenson Nelson searched the vehicle in which § 87(2)(b) was an occupant.

§ 87(2)(b) stated that after he was out of his vehicle, Sgt. Nelson leaned into the open driver's side front door and looked through the front seat for 30-50 seconds. § 87(2)(b) did not see Sgt. Nelson open any of the rear doors, but stated that he could have done that. Sgt. Nelson then opened the trunk and looked there. § 87(2)(b) believed that the only way Sgt. Nelson could have opened the trunk was to press a button that was located at the driver's side front door. Sgt. Nelson was moving things around when he came across § 87(2)(b)'s weight vest. § 87(2)(b) said, "That's a weight vest; that's stuff I use at the gym,"

Sgt. Nelson then took § 87(2)(b)'s gray and black bookbag and searched through the main compartment. Sgt. Nelson did not retrieve anything during this search. After Sgt. Nelson was finished with the trunk, an additional marked RMP approached with two officers. The officers spoke to Sgt. Nelson for a couple of seconds and Sgt. Nelson came back to § 87(2)(b) removed his handcuffs, and told him to sit back in his vehicle. The other officers left 20 seconds later.

PO Villegas stated that Sgt. Nelson looked into the lungable areas of § 87(2)(b)'s vehicle so that he could check if there were any possible weapons that § 87(2)(b) could have been reaching for when he was moving around in his vehicle. PO Villegas saw Sgt. Nelson lean into the driver's side door, which was open at the time. PO Villegas did not see the specifics of where Sgt. Nelson looked in the vehicle because she was busy watching § 87(2)(b). PO Villegas did not see if Sgt. Nelson went into any closed compartments.

§ 87(2)(b) was calm at the time; he had ceased moving around. PO Villegas did not remember if Sgt. Nelson ever looked in the trunk of § 87(2)(b)'s car or if this trunk was open at any point. PO Villegas stated that it did not seem possible that the trunk could have been open because § 87(2)(b) was sitting on the bumper. PO Villegas did not recall if Sgt. Nelson ever went through a book bag. After they returned to the RMP, Sgt. Nelson ran § 87(2)(b)'s license. There was no issue wherein Sgt. Nelson told § 87(2)(b) that the photo in his license did not look like him. Both officers got out and PO Villegas issued § 87(2)(b) a summons for failing to signal. § 87(2)(b) said he was going to file a CCRB on the officers.

Sgt. Nelson stated that after he frisked § 87(2)(b) PO Villegas then escorted him to the area between the back of his car and the front of the RMP. Sgt. Nelson wanted to check the car's reachable areas to see if there were any weapons that § 87(2)(b) could have been searching for. Once § 87(2)(b) was toward the back, Sgt. Nelson opened the driver's side front door and leaned into the door. He looked down at the areas where § 87(2)(b) appeared to be reaching. Sgt. Nelson then opened the driver's side rear door and leaned in in order to look in the areas where § 87(2)(b) also appeared to be reaching for. Sgt. Nelson did not recall if he looked through any consoles or closed compartments. Sgt. Nelson did not recover any weapons and he didn't see anything in the car.

Sgt. Nelson then went around to where PO Villegas and § 87(2)(b) were standing. At this time, the threat level had gone down and Sgt. Nelson considered § 87(2)(b) less suspicious; however, the threat level was still elevated because § 87(2)(b) appeared to be nervous at this point; he was fidgeting with the handcuffs and moving his shoulders. § 87(2)(b) was speaking in a loud tone of voice, saying, “Why am I out the car? Why did you stop me in the first place?” This behavior led Sgt. Nelson to feel that § 87(2)(b) was hiding something and that there was a possibility that he could have been concealing a weapon.

§ 87(2)(b) said, “I just came back from the gym. Look in my trunk; I got my gym stuff in there.” Sgt. Nelson believes that at this point, § 87(2)(b) had the keys in his hand and he popped open the trunk using these keys. This may have been after § 87(2)(b) had his cuffs off but Sgt. Nelson was not sure. Sgt. Nelson does not recall exactly how this happened but he knew the trunk was popped open with the keys. Sgt. Nelson never opened the trunk with the keys. Sgt. Nelson did not recall if PO Villegas opened the trunk with the keys. PO Villegas was standing there at the time; she was not participating in this conversation.

After the trunk was open, Sgt. Nelson performed a visual inspection. Sgt. Nelson looked in the trunk to ease his level of threat about the situation. Sgt. Nelson saw a weight vest and asked § 87(2)(b) “What is this?” § 87(2)(b) said, “It’s a weight vest; I just came back from the gym.” Sgt. Nelson did not see anything else in the trunk. Sgt. Nelson did not recall if there was a backpack in the trunk. Sgt. Nelson looked in the trunk for less than 30 seconds. Once Sgt. Nelson looked in the trunk, the level of threat was lowered. After § 87(2)(b) was uncuffed and sat back in his vehicle, PO Villegas wrote the summons. PO Villegas handed § 87(2)(b) the summons for failing to signal. Sgt. Nelson warned and admonished § 87(2)(b) for talking on his cell phone while driving.

In the absence of any additional specific factors, looking over one’s shoulder or even ducking down inside a vehicle are considered innocuous behavior that would not provide reasonable suspicion of criminality or justification to search a vehicle. *People v. Rossetti*, 148 A.D.2d 357 (1st Dept. 1989) (Board Review 09). A limited search may be justified when there are both 1) movements within a car suggesting a person was reaching for something that might have been a weapon and 2) there are other suggestive factors. *People v. Newman*, 96 A.D.3d (2012) (Board Review 10)

§ 87(2)(g)
[REDACTED]

Squad: ____

Investigator: _____
Signature Print Date

Pod Leader: _____
Title/Signature Print Date

Attorney: _____
Title/Signature Print Date